

1 Michael D. Gutierrez #V68887
2 P.V.S.P A4-141
3 P. O. Box 8501
4 Coalinga, CA 93210

5 Petitioner in Propria Persona

FILED

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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 MICHAEL DAVID GUTIERREZ,

13 Petitioner in Propria Persona,

14 vs.

15 JAMES A. YATES, WARDEN,
16 DEPARTMENT OF CORRECTIONS,
17 PLEASANT VALLEY STATE PRISON,

18 Defendants.

CASE NO. 5:07-CV-03668-RMW

**DECLARATION OF MICHAEL
DAVID GUTIERREZ IN SUPPORT
OF MOTION FOR PERMISSION TO
E-FILE DOCUMENTS**

[Filed Concurrently with Notice of
Motion; Memorandum of Points and
Authorities; Declaration of Robert
Mendoza; and Proposed Order]

Date: July 14, 2007
Time: 9:00 a.m.
Judge: Hon. Ronald M. Whyte
CourtRoom: 6

21
22 I, Michael David Gutierrez declare as follows:

23 1. I have personal knowledge of the matters stated herein, and if called upon to
24 testify I would and could competently do so.

25 2. I am presently incarcerated at Pleasant Valley State and am challenging a
26 felony state conviction sustained in Santa Clara County Superior Court on February 2,
27 2005. On March 4, 2005, I timely appealed my conviction to the California Sixth
28 Appellate District and the Appellate Court in an unpublished opinion on November 20,

**DECLARATION OF MICHAEL DAVID GUTIERREZ IN SUPPORT OF
MOTION FOR TO PERMISSION TO E-FILE DOCUMENTS**

ORIGINAL

1 2006 affirmed the judgment but directed the trial court to correct the abstract of judgment
2 to reflect that the enhancement on Count 2 under Penal Code Section 12022.7 be stayed.

3 3. On January 1, 2007 I timely filed a Petition for Review with the California
4 Supreme Court but his Petition for Review was denied on February 14, 2007.

5 4. On July 17, 2007 I timely filed the instant writ of habeas corpus seeking
6 review of the state Appeal Court's ruling. The case was designated for electronic filing.
7 Along with the instant writ of habeas corpus, I also filed a Motion to Proceed in Forma
8 Pauperis and an Ex Parte Motion to Appoint Counsel.

9 5. On February 11, 2008 the court granted my request to proceed in Forma
10 Pauperis but denied the motion to appoint counsel to represent me in the instant federal
11 court action. As a result of court's denial of my motion to appoint counsel, I must now
12 rely on the assistance of a family relative, Robert Mendosa, to assist me in prosecuting the
13 instant action.

14 6. After communicating with Mr. Mendosa, he advised me that he was not a
15 lawyer and suggested that it would be advisable to seek the assistance of a qualified
16 member of the State Bar of California to represent me in the instant federal action. Mr.
17 Mendosa further advised me that if the court denied my motion for appointment of
18 counsel, he would be willing to offer his assistance in having documents filed with the
19 court. Mr. Mendosa qualified his offer of assistance by stating, that he could not provide
20 me with legal advice since he was not licensed to practice law. Mr. Mendosa further
21 advised me as to what he benefits and drawbacks of electronically filing documents would
22 be suggested that in order to properly assist me, the most efficient and economical method
23 of filing documents in the instant action would be by electronic filing. As such, I
24 authorized Mr. Mendosa to open an email account for the sole and exclusive purpose of
25 communicating with the court and retrieving court documents. That email account is:
26 gutierrezdm100@yahoo.com.

27 7. Mr. Mendosa, advised me that he regularly e-files documents in the
28 Northern District (under the supervision of attorney), as well as in other state and federal

1 courts. Mr. Mendosa further informed me that he maintains a Public Access to Electronic
2 Records ("PACER") account and is familiar with filing, searching and retrieving
3 documents from the federal Case Management/Electronic Case Files ("CM/ECF") system
4 as well as PACER.

5 8. I assert that I am bringing the instant action in good faith, believing that my
6 claim has merit and hereby authorize Mr. Mendosa to electronically file and retrieve any
7 documents in the instant action as necessary from the PACER system and for purposes of
8 prosecution of the instant action. I further authorize Mr. Mendosa to access such any and
9 all documents related to the instant action from the email account listed above.

10 9. I believe that with Mr. Mendosa's assistance, I can fully comply with any
11 and all e-filing requirements that the court imposes on the parties to this litigation.

12 I declare under penalty of perjury under the laws of the United States that the
13 foregoing is true and correct.

14 Executed this 23 day of June, 2008 in the City of Coalinga, State of
15 California.

16 DATED: June 23, 2008

17 By:


MICHAEL DAVID GUTIERREZ

DECLARATION OF SERVICE BY U. S. MAIL

Gutierrez v. Yates, Case No. C 07-3668 RMW (PR)

I declare:

I am presently incarcerated at Pleasant Valley State Prison. I am over the age of 18, and a party to the within action. My address is: A-4-141, Box, 8501, Coalinga, California.

On June 23, 2008, I served the foregoing document described as:

**DECLARATION OF MICHAEL DAVID GUTIERREZ IN SUPPORT OF
MOTION FOR TO PERMISSION TO E-FILE DOCUMENTS**

on the interested parties by U. S. Mail a true copy as follows:

EDMUND G. BROWN JR., Esq.
Attorney General of the State of
California

Attorneys for Respondent

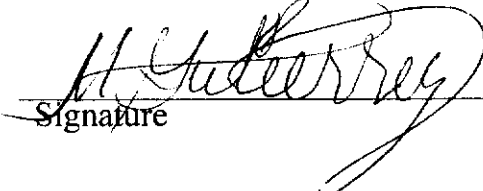
DANE R. GILLETTE., Esq.
GERALD A. ENGLER., Esq.
GREGORY A. OTT., Esq.
ALLEN R. CROWN., Esq.
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5847
Fax: (415) 703-1234

☒ **VIA U.S. MAIL:** 

On June 23, 2008, at , California, I deposited the above described document, with the U.S. postal service with postage thereon fully prepaid and addressed to the parties listed above.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and was executed on June 23, 2008 at Coalinga, California.

Michael D. Gutierrez
Type or Print Name


Signature